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APPLICATION FOR PATENT TERM ADJUSTMENT

Applicant : Larry Eugene West
Patent No. : 7,435,581
Issued : October 14, 2008
For : INTEGRATED BIO-REACTOR
MONITOR AND CONTROL SYSTEM
Examiner : Bowers, Nathan Andrew
Conf # : 5738

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby submits this Application for Patent Term Adjustment (PTA) to correct the Office's PTA calculation of 570 days. The above-referenced patent issued on October 14, 2008, and therefore this application under 37 C.F.R. § 1.705(d) is timely filed within two months of the issue date.

Under **35 U.S.C. § 154(b)(1)(A)**, an Applicant may be entitled to a one-day extension of patent term for every day that issuance of a patent is delayed due to enumerated prosecution delays by the Office (hereinafter, "prosecution delays"). In addition, **35 U.S.C. § 154(b)(1)(B)** provides a one-day extension for every day greater than three years after the application filing date that it takes for a patent to issue ("issuance delays"). Under *Wyeth v. Dudas*, No. 07-1492 (JR) (D.D.C. Sept. 30, 2008), the proper patent term adjustment is the sum of "prosecution delays" and "issuance delay" on the part of the Office, without double-counting any "overlapping days," and minus any Applicant delay.

In this case, the face of the patent indicates **570 days** of PTA, as determined by the Office. Applicant submits, however, that he is entitled to a longer period of PTA under 35 U.S.C. § 154(b) in light of the decision in *Wyeth*, and requests that the Office recalculate Applicant's PTA in accordance with that ruling.

After review of the file history and Image File Wrapper (IFW), Applicant believes the correct PTA to be **1165 days** based on the following facts:

1. The application was filed November 26, 2003, but the Office failed to issue a First Action until November 13, 2006, resulting in **656 days** of “prosecution delay” on the part of the Office under § 154(b)(1)(A).
2. The § 154(b)(1)(B) PTA period, **November 26, 2006 to October 14, 2008**, encompasses **688 days** of “issuance delay.”
3. This **688-day** delay should be reduced by any “prosecution delay” days that also occurred during the § 154(b)(1)(B) period, to avoid double-counting overlapping days. In this case, there are no “overlapping days,” because the Office’s **656-day** delay in issuing an First Action occurred *before* November 26, 2006, the start of the § 154(b)(1)(B) “issuance delay” period. Thus, Applicant submits it should be credited for all **688 days** of “issuance delay.”
4. The sum of “prosecution delays” and “issuance delay” should be reduced by the total “Applicant delay,” if any. The instant case involved a total of **179 days** of Applicant delay which arose from the following circumstances:
 - a. A Response to Restriction Requirement was filed on May 11, 2007, in response to a Restriction Requirement dated November 13, 2006, resulting in **87 days** of Applicant delay.
 - b. A Response After Non-Final Action was filed on November 26, 2007, in response to a Non-Final Office Action dated July 26, 2007, resulting in **31 days** of Applicant delay.
 - c. An Information Disclosure Statement (IDS) was filed on July 2, 2008 without a statement under 37 CFR 1.704(d). The July 2, 2008 filing was supplemental to an initial Reply which was filed on May 2, 2008, resulting in **61 days** of Applicant delay under 37 CFR 1.704(c).
5. The patent is not subject to a terminal disclaimer.

Applicant's PTA calculation is as follows:

Actions Under 35 U.S.C. § 154(b)(1)(A)		Delays		
Initial	Responsive	PTO	App	Over
11/26/2003 Filing Date	11/13/2006 Restriction Requirement	656		
02/26/2004 Notice to File Missing Parts	04/15/2004 Filing Fee Payment		0	
11/13/2006 Restriction Requirement	05/11/2007 Response to Restriction Requirement		87	
05/11/2007 Response to Restriction Requirement	07/26/2007 Non-Final Office Action	0		
07/26/2007 Non-Final Office Action	11/26/2007 Response After Non-Final Action		31	
11/26/2007 Response After Non-Final Action	02/05/2008 Non-Final Office Action	0		
02/05/2008 Non-Final Office Action	05/02/2008 Response After Non-Final Action		0	
05/02/2008 Response After Non-Final Action	07/02/2008 Information Disclosure Statement <i>without</i> Statement under 37 CFR 1.704(d)		61	
05/02/2008 Response After Non-Final Action	07/30/2008 Information Disclosure Statement <i>including</i> Statement under 37 CFR 1.704(d)		0	
05/02/2008 Response After Non-Final Action	08/01/2008 Final Rejection	0		
08/01/2008 Final Rejection	08/08/2008 Amendment After Final Rejection		0	
08/08/2008 Amendment After Final Rejection	08/26/2008 Notice of Allowance	0		
08/26/2008 Notice of Allowance	09/03/2008 Issue Fee Payment		0	
09/03/2008 Issue Fee Payment	10/14/2008 Issue Date	0		

Actions Under 35 U.S.C. § 154(b)(1)(B)				Over
11/26/2006 3 Years from Filing Date	10/14/2008 Issue Date	688		0
Actions Under 35 U.S.C. § 154(b)(1)(A) and (B)		Delay & Overlap		
Totals	PTO Delays	1344		
	Applicant Delays		179	
	Period of Overlap			0
	Patent Term Adjustment	1165		

Applicant submits that he is entitled to the sum of **656** days of "prosecution delay" and **688** days of "issuance delay," minus **179** days of Applicant delay, for a **total patent term adjustment of 1165 days**. Applicant hereby requests that the Office correct the initial calculation of PTA to reflect **1165** days.


The \$200 fee prescribed by 37 CFR 1.18(e) is enclosed for this application.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11.19.2008

By: 

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